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§15–1628.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Drug shortage list" means a list of drug products listed on the federal Food and Drug Administration's Drug Shortages website.

(3) (i) "Maximum allowable cost" means the maximum amount that a pharmacy benefits manager or a purchaser will reimburse a contracted pharmacy for the cost of a multisource generic drug, a medical product, or a device.

(ii) "Maximum allowable cost" does not include dispensing fees.

(4) "Maximum allowable cost list" means a list of multisource generic drugs, medical products, and devices for which a maximum allowable cost has been established by a pharmacy benefits manager or a purchaser.

(b) In each participating pharmacy contract, the pharmacy benefits manager shall include the sources used to determine maximum allowable cost pricing.

(c) A pharmacy benefits manager shall:

(1) update its pricing information at least every 7 days;

(2) establish a reasonable process by which a contracted pharmacy has access to the current and applicable maximum allowable cost price lists in an electronic format as updated in accordance with the requirements of this section; and

(3) immediately after a pricing information update under item (1) of this subsection, use the updated pricing information in calculating the payments made to all contracted pharmacies.

(d) (1) A pharmacy benefits manager shall maintain a procedure to eliminate products from the list of drugs subject to maximum allowable cost pricing as necessary to:

(i) remain consistent with pricing changes;

(ii) remove from the list drugs that no longer meet the requirements of subsection (e) of this section; and

(iii) reflect the current availability of drugs in the marketplace.

(2) A product on the maximum allowable cost list shall be eliminated from the list by the pharmacy benefits manager within 7 days after the pharmacy benefits manager knows of a change in the availability of the product.

(e) Before placing a prescription drug on a maximum allowable cost list, a pharmacy benefits manager shall ensure that:

(1) the drug is listed as "A" or "B" rated in the most recent version of the U.S. Food and Drug Administration's approved drug products with therapeutic equivalence evaluations, also known as the Orange Book, or has an "NR" or "NA" rating or similar rating by a nationally recognized reference;

(2) (i) if a drug is manufactured by more than one manufacturer, the drug is generally available for purchase by contracted pharmacies, including contracted retail pharmacies, in the State from a wholesale distributor with a permit in the State; or

(ii) if a drug is manufactured by only one manufacturer, the drug is generally available for purchase by contracted pharmacies, including contracted retail pharmacies, in the State from at least two wholesale distributors with a permit in the State; and

(3) the drug is not obsolete, temporarily unavailable, or listed on a drug shortage list as currently in shortage.

(f) For disputes regarding maximum allowable cost pricing, each participating pharmacy contract must include a process to appeal, investigate, and resolve disputes regarding maximum allowable cost pricing that includes:

(1) a requirement that an appeal be filed by the contract pharmacy no later than 21 days after the date of the initial adjudicated claim;

(2) a requirement that, within 21 days after the date the appeal is filed, the pharmacy benefits manager investigate and resolve the appeal and report to the contracted pharmacy on the pharmacy benefits manager's determination on the appeal;

(3) a requirement that a pharmacy benefits manager make available on its website information about the appeal process, including:

(i) a telephone number at which the contracted pharmacy may directly contact the department or office responsible for processing appeals for the pharmacy benefits manager to speak to an individual or leave a message for an individual who is responsible for processing appeals;

(ii) an e–mail address of the department or office responsible for processing appeals to which an individual who is responsible for processing appeals has access; and

(iii) a notice indicating that the individual responsible for processing appeals shall return a call or an e–mail made by a contracted pharmacy to the individual within 3 business days or less of receiving the call or e–mail;

(4) a requirement that a pharmacy benefits manager provide:

(i) a reason for any appeal denial;

(ii) the national drug code of a drug and the name of the wholesale distributor from which the drug was available on the date the claim was adjudicated at a price at or below the maximum allowable cost determined by the pharmacy benefits manager; and

(iii) the mathematical calculation used to determine the maximum allowable cost; and

(5) if an appeal is upheld, a requirement that a pharmacy benefits manager:

(i) for the appealing pharmacy:

1. adjust the maximum allowable cost for the drug as of the date of the original claim for payment; and

2. without requiring the appealing pharmacy to reverse and rebill the claims, provide reimbursement for the claim and any subsequent and similar claims under similarly applicable contracts with the pharmacy benefits manager:

A. for the original claim, in the first remittance to the pharmacy after the date the appeal was determined; and

B. for subsequent and similar claims under similarly applicable contracts, in the second remittance to the pharmacy after the date the appeal was determined; and

(ii) for a similarly situated contracted pharmacy in the State:

1. adjust the maximum allowable cost for the drug as of the date the appeal was determined; and

2. provide notice to the pharmacy or pharmacy's contracted agent that:

A. an appeal has been upheld; and

B. without filing a separate appeal, the pharmacy or the pharmacy's contracted agent may reverse and rebill a similar claim.

(g) A pharmacy benefits manager may not retaliate against a contracted pharmacy for exercising its right to appeal under this section or filing a complaint with the Commissioner under this subsection.

(h) A pharmacy benefits manager may not charge a contracted pharmacy a fee related to the readjudication of a claim or claims resulting from carrying out the requirement of a contract specified in subsection (f)(5) of this section or the upholding of an appeal under subsection (i) of this section.

(i) (1) If a pharmacy benefits manager denies an appeal and a contracted pharmacy or a designee of the contracted pharmacy files a complaint with the Commissioner, the Commissioner shall:

(i) review the compensation program of the pharmacy benefits manager to ensure that the reimbursement for pharmacy benefits management services paid to the pharmacist or a pharmacy complies with this subtitle and the terms of the participating pharmacy contract; and

(ii) based on a determination made by the Commissioner under item (i) of this paragraph, dismiss the appeal or uphold the appeal and order the pharmacy benefits manager to pay the claim or claims in accordance with the Commissioner's findings.

(2) On request, the pharmacy benefits manager shall provide to the Commissioner all mathematical calculations, accounts, records, documents, files, logs, correspondence, or other information necessary to complete the Commissioner's review under paragraph (1) of this subsection.

(3) All information and data collected by the Commissioner during a review:

(i) is considered to be confidential and proprietary information; and

(ii) is not subject to disclosure under the Public Information Act.

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